

D. B. ALLSUP  
R. B. ALLSUP

IBLA 85-477, IBLA 85-549

Decided June 12, 1986

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, declaring competitive oil and gas lease sale bid deposits forfeited. W 89880 and W 89895.

Affirmed.

1. Accounts: Refunds -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease, tender the balance of the bonus bid, and pay the first year's lease rental within 30 days of notice to do so, results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

APPEARANCES: D. B. Allsup, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

D. B. Allsup and R. B. Allsup appeal from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), declaring the bonus bid deposits submitted with competitive oil and gas lease bids forfeited because appellants, who were the high bidders at the October 31, 1984, lease sale, failed to execute the lease forms and tender the balance of the bonus bid and the lease rental within 30 days of notice to do so as required by the regulation at 43 CFR 3120.5.

On January 23, 1985, BLM sent appellants two separate letters informing them they were the highest acceptable bidders on parcel 24, Shawnee Field (W 89895), and on parcel 9, Kaye Field (W 89880), at the October 31, 1984, competitive oil and gas lease sale. 1/ That letter informed appellants they must return the executed lease forms, the balance of the bonus bids, the

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1/ The file discloses that on Nov. 26, 1984, appellants notified BLM they had made a "mistake" regarding parcel 9, and they would like to relinquish the parcel. BLM responded to this request by letter dated Dec. 31, 1984, advising appellants that Departmental regulations do not allow a refund of the bid deposit. Appellants then notified BLM by letter dated Jan. 3, 1985, that they would "go ahead on the drawing the way it is [accepting] the parcel."

first year's rentals, and their proportionate share of the advertising costs within 30 days of receipt of the letters.

On March 12, 1985, BLM issued a decision informing appellants that because they had failed to return the executed lease forms and required payments, their bid for parcel 24 was rejected. Additionally, BLM stated that in accordance with 43 CFR 3120.6, their one-fifth bid deposit submitted with their bid was forfeited. BLM issued an identical decision regarding parcel 9 on March 27, 1985. Appellants have appealed both BLM decisions, requesting a refund of the deposits submitted with their bids on parcels 24 and 9, \$ 2,080 and \$ 2,880, respectively.

In a notice of appeal filed with BLM on March 25, 1985, appellants explain their reasons for appealing the forfeiture of their bid deposit on parcel 24:

(a) The schedule of parcels being offered was not received from your office until a few days prior to the bids being due. Therefore, we were unable to do as much research on the parcels as we would ordinarily have done. As we live in Oregon, it is very difficult to obtain information in a timely manner and we would suggest that perhaps your mailing schedule could be adjusted to allow for outlying states.

(b) At the time of the bid, our understanding was that it was not required to have a block of 160 acres in order to drill. However, upon further investigation, we learned that this is the case. As this parcel, though it contains 200 acres, does not have 160 acres in a block, we feel that we should be refunded our one-fifth deposit.

In a notice of appeal filed April 22, 1985, appellants explained their reasons for appealing the forfeiture of their bid deposit on parcel 9:

At the time we submitted our bid, we were interested in drilling on the 160 acre block. However, due to the short length of time between receiving the bid package and the date bids were due, we were unable to obtain all the information pertinent to this parcel. After receiving notification of our successful bid, we learned that there had already been two (2) wells drilled on the property, which had gone dry and been plugged and abandoned.

We feel that this would not leave sufficient acreage to interest any exploratory drilling and that this should be labeled as a "plugged and abandoned" field.

We also feel that is very unfair of the BLM to even offer for bid, parcels that have had producing wells which are plugged and abandoned. It is extremely difficult for the general public to obtain the necessary information on the property in the time allotted before the bid due date.

Because the issues raised in the two appeals are the same, we have consolidated them for consideration in this decision.

[1] The controlling regulation, 43 CFR 3120.6, provides: "If the high bid is rejected for failure of the successful bidder to execute the lease forms and pay the balance of the bonus bid, or otherwise to comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited." This regulation reflects the Department's policy of strict enforcement of the bid-deposit requirement. The rationale is that allowing a bidder to withhold his bid deposit without penalty would obviously place him in a much better position than other bidders, an approach that would be destructive of the orderly conduct of lease sales. North American Coal Corp., 74 I.D. 209, 211 (1967); see Lee E. Loeffler, 33 IBLA 18, 20 (1977). Further, it would be unfair to potential bidders of limited means if those bidders with greater capital resources were permitted to bid on many parcels and later decide which leases to execute and accept without penalty. Howell Spear, 56 IBLA 151 (1981); Bernard P. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghelarducci, 41 IBLA 277 (1979). Thus, appellants' bid deposits are subject to forfeiture for failure to execute the leases and otherwise comply with applicable regulations. 43 CFR 3120.6; Howell Spear, *supra*; Bernard P. Gencorelli, *supra*; Fred S. Ghelarducci, *supra*. We further note that publication of the Notice of Oil and Gas Lease Sale put appellants on notice that "[n]o bid may be modified or withdrawn unless the modification or withdrawal is received prior to time fixed for opening of bids." Appellants are not permitted to withdraw a bid without penalty after the bids are opened. Howell Spear, *supra*; Fred S. Ghelarducci, *supra*; see 43 CFR 3120.5(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.

Administrative Judge

We concur

Franklin D. Arness  
Administrative Judge

Will A. Irwin  
Administrative Judge

